(Testimony of C. A. Wirth.)

A. They were too badly shrunken. The whites was broken down, too thin and runny. The yolks were flat.

Q. Now, in the trade what is the method of candling, as to whether the candling is done previous to their being processed, or oiled?

A. The common method in the trade is to candle the eggs, get them ready for shipment, and then process them and ship them.

Q. Why are they not candled after being processed?

A. After being processed they are apt to be oily. It is very disagreeable for the candlers to handle them. It costs money to process eggs, and so they remove all the checked eggs and the odd-shaped eggs, the rots, and the off-grade eggs, before processing. It is not economical to do it otherwise.

Q. Are you able to state whether these eggs have been candled within a period of three or four weeks?

A. If they had been candled nothing had been removed. There was no indication of any candling having been done within that period of time.

Q. And why do you say that?

A. The type of rots found, the shrinkage of checks—or the shrinkage in there of the eggs—none of them had been removed. The extreme shrinkage.

Q. You mean by that if they had been candled the bad eggs had not been removed as results of the candling? A. Yes.

Mr. Faulkner: That is all.

Mr. Pratt: That is all.

The Court: Call your next witness. Step down.

Mr. Pratt: Mr. Mills is being recalled, if your Honor please. He is the manager of the Terminal Warehouse Company, the refrigerator company at Los Angeles. He was to bring his record of refrigeration, as your Honor will remember.

WILBUR J. MILLS,

recalled as a witness for the Government, having been previously duly sworn, testified as follows:

The Court: He has already been sworn.

Direct Examination

Mr. Pratt: Q. Mr. Mills, you testified the other day, I think, that you were assistant manager of the Terminal Refrigeration Company of Los Angeles.

A. That is correct.

Q. And you are back today with the records of refrigeration of the room in which these eggs, lot 3737, were stored. How is the record kept as to the refrigeration of the rooms in your warehouse?

A. There is a manual chart kept up by temperature men and record six times a day; and also a recording device, such as a clock, which records the temperature for one week.

Q. And that is in the room?

A. That is in the room.

Q. That is an automatic instrument——

A. That is correct.

(Testimony of Wilbur J. Mills.)

Q. ——which keeps track of the temperature by an ink line? A. That is correct.

Q. That goes around and records temperature at every moment, is that right?

A. That is right.

Q. According to the record which you produced, your ledger sheet, I think is was, you showed, did you not, the number of the room in which these eggs were stored in your warehouse?

Mr. Faulkner: I beg your pardon. There is no testimony at all about these eggs coming from Mr. Mills, not one word. About these cases—3737.

Mr. Pratt: These cases which were marked Lot 3737.

Q. I direct your attention to this exhibit No. 123. Does this show where the eggs were stored?

A. It shows Room 41. That is where the eggs were originally stored.

Q. And how long did they remain in room 41?

Mr. Faulkner: Just a moment. You mean the cases marked 3737.

Mr. Pratt: Marked 3737.

Q. How long did Lot 3737 remain in room 41?

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial, not binding on the defendants.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

A. Approximately August 25, 1943.

Mr. Pratt: Q. Where were these eggs then moved to? A. To room 63.

(Testimony of Wilbur J. Mills.)

Q. Have you with you the record showing the temperature of this room 41 from the 8th of February, 1943, until what date, did you say, August 25th? A. August 25th.

Q. You have that record, have you?

A. I do. I have both records here. Do you wish one at a time?

Q. Let us have the clock record. Is that what you call it? A. Yes, sir.

Q. These clock records that you have now handed me are from February 12th to 19th, 1943, first? A. That's right.

Q. When did they go into that room?

A. February 11th, I believe.

Q. February 11th. Now, the first of these, which is dated February 12th, to February 19th, 1943, shows by the ink mark what as to temperature?

Mr. Faulkner: Just a moment, if your Honor please. In other words, Mr. Mills is not the engineer. He cannot testify to the temperature.

The Court: He is testifying here what these records disclose.

Mr. Faulkner: Yes, but the records are not binding. The method of proving the temperature is not by proving a corporate record.

The Court: I am allowing this to go to the jury. You asked for them.

Mr. Faulkner: I didn't ask for them. I asked for the proper evidence concerning refrigeration.

The Court: Isn't this it?

Mr. Faulkner: Your Honor, on a book of ac-

(Testimony of Wilbur J. Mills.)

count a man can establish that a book of account is kept. The issue here is the refrigeration of a room. Certainly, the engineer can read his records kept at the time of the occurance and say that the room temperature on such and such a date is so and so—I grant that—but I could not testify, if I was the president of this company, that my records show this. That is hearsay. That is not binding upon the defendants.

The Court: Are you asking for the best evidence?

Mr. Faulkner: Yes, your Honor.

The Court: What is the best evidence?

Mr. Faulkner: The testimony of the man who kept the record.

The Court: Q. Are these records kept under your supervision? A. Yes, sir.

Mr. Faulkner: May I ask Mr. Mills a question?

The Court: You may.

Mr. Faulkner: Q. Mr. Mills, have you anything to do with preparing the record you hold in your hand? A. No, sir.

Q. You do not, do you?

A. I do not prepare this record.

Mr. Pratt: Q. The record prepares itself, does it not? A. This record does prepare itself.

Q. That is, it is an automatic machine which registers temperature continuously, each of these sheets being for a period of one week, is that right?

A. That is correct.

Q. Now, referring to the first of these circular

(Testimony of Wilbur J. Mills.)

recording sheets, will you state what the temperature was during that period?

Mr. Faulkner: That is just the point, your Honor. Mr. Mills is not a competent witness to that testimony. There is no rule of law that permits it. The man who is the engineer on a ship can read his engineer's log. In a plant like that I would assume that the engineer could testify from the records that were made in the conduct of his duties.

The Court: Q. How are these records made?

A. These records are made from a clock. These records are made by three different temperature men (indicating).

Q. In relation to these automatic ones that you have here, they are made by a dial?

A. By a dial, yes.

Q. Who has charge of the dial?

A. The chief engineer would have charge of the dial, and they would be placed in the clock, itself, by the temperature man.

Q. Then what becomes of them?

A. They are returned to the office at the end of each week.

Q. And I asked you if these matters that you have here are under your supervision.

A. Yes, sir, under my supervision.

Q. In what respect are they, and how do you come in contact with them?

We are interested in the surveillance of the temperature recordings which are set down from day to day, so that we know that the work is being

(Testimony of Wilbur J. Mills.)

done properly; the temperatures are being recorded and handled properly.

Q. Did you see those from day to day?

A. Surely.

Q. All of those?

A. These come up each day, your Honor.

Q. Each day? A. Yes, sir.

Mr. Pratt: Q. You are talking about the larger sheets? A. That is correct.

The Court: Q. And what about the others?

A. These come up at the end of each week.

The Court: I will allow the testimony.

Mr. Faulkner: Exception.

The Court: Note an exception, Mr. Reporter. Let us proceed.

The Witness: Mr. Pratt, I believe your question is for me to give you what this record shows—is that it?

Mr. Pratt: Q. Yes, on that first week.

A. It shows at the time the chart was placed in the clock, on Friday, that the temperature in that room was approximately 34 degrees.

The Court: Friday, what date?

A. Friday would be the 12th of February.

Q. 1943?

A. That is right. The temperature variation at that time went to Saturday up to approximately 38, and came down Saturday morning to about 36. Sunday it went up just a bit. We were probably working that Sunday.

(Testimony of Wilbur J. Mills.)

Mr. Pratt: Q. Up to what? What is the high on Sunday?

A. On Sunday the high is 42. On Monday——

Q. Give the high on each date.

A. The high is 42. All right, sir. On Monday the high was 38. On Tuesday the temperature had receded to 36 and remained practically constant. On Wednesday the temperature had receded to approximately 34 and remained approximately constant there. On Thursday morning at six it was approximately 32 and remained at 32 until approximately six a. m. that morning, when it arrived at almost 31 degrees. That takes us into Friday again, where it was approximately 31 at the time this was removed from the clock.

Q. On the next week, the week of February 19th, the temperature was——

Mr. Faulkner: May my objection go to all this testimony?

The Court: Very well.

Mr. Faulkner: May I see the record he just read from please?

Mr. Pratt: Q. That next week the temperature was practically the same all week, was it not.

A. It was.

Q. At what temperature? A. 30 to 31.

Q. And the next week, the week of February 26th, it was also stable during the entire week, was it not? A. It was.

Q. With a high of what?

A. 31 Tuesday, 12 midnight.

(Testimony of Wilbur J. Mills.)

Q. And on the next week?

A. The week of March 5th.

Q. It was also stable, wasn't it?

A. It was. The recording is practically circular, which means right on the nose at 30 degrees with very little variation.

Q. The next week of March 12th the same is true, is it not?

A. It is. The same is true on that.

Q. And I direct your attention to the succeeding sheets for the succeeding weeks up to August 25th. That is the date they have changed, you say, when they moved these packages to another room. I will ask whether all of these sheets do not indicate that the temperature was stable at approximately 32 degrees?

A. I am sorry to take all this time. Those recordings are as stated previously.

Mr. Pratt: I ask that these circular records be marked, collectively, that have already been identified, as one exhibit and received in evidence.

The Court: They will be admitted and marked next in order.

(The documents were marked U. S. Exhibit 131 in evidence.)

Mr. Faulkner: Subject to my objection that they are incompetant, irrelevant, and immaterial, and no foundation has been laid, in that there is no evidence that those are records made by this witness.

The Court: The objection will be overruled.

(Testimony of Wilbur J. Mills.)

Mr. Pratt: Q. Now, you said that this Lot 3737 was moved to room 63 on the 25th of August, approximately. Will you produce the similar records of the automatic device covering the period from August 27th to October 15th, these records being of room 63? A. That is correct.

Q. Examining these, Mr. Mills, they show, do they not, all of them, that the temperature of that room remained practically the same during that entire period at about 30 to 32 degrees?

A. That is correct.

Mr. Pratt: These circular recording sheets for room 63 from August 27 to October 15 are offered in evidence as one exhibit number.

Mr. Faulkner: The same objection: incompetent, irrelevant, immaterial, and hearsay as to the defendants, and no foundation laid in the instances pointed out to your Honor in the oral argument on the admissibility.

The Court: The objection will be overruled.

(The documents were marked U. S. Exhibit 132 in evidence.)

Mr. Pratt: If the Court please, I would like to hand these to the jury for their observation.

Mr. Faulkner: Mr. Pratt, may I suggest that there are so many there, that you pick out one or two and we will agree that they are typical? For instance, these two are about the widest departures from an ordinary one where the refrigeration is constant at about 32

Mr. Pratt: All right.

(Testimony of Wilbur J. Mills.)

Mr. Faulkner: You may hand them all to the jury, but I mean there are so many. They are all practically the same constant temperature.

Mr. Pratt: This Exhibit 132, these several sheets, are all alike, practically, with a complete circle showing a stable temperature.

Q. I particularly direct your attention——

Mr. Faulkner: The jury is examining those sheets.

Mr. Pratt: I particularly direct your attention, Mr. Mills, to this circular record, which is the first of Exhibit 131, being a record of temperatures during the week from February 12, 1943, where there is a variation indicated by the red mark, and you have testified that the temperature went up to what maximum?

A. I think I testified to 42 degrees.

Q. How long did the temperature remain at 42 degrees? A. Just an hour or thereabout.

Q. About an hour? A. That is correct.

Q. Are you able to state whether, during an hour's period, the temperature of the eggs that were in these cases would also go up to 42?

A. Those eggs had probably not reached [1746] a temperature of 42 degrees as yet. The reasons for the variations there, of course, are that we were loading that ro m, and naturally the eggs had been out of the refrigerator cars for a period of time and had gone to outside temperature. They were still in the process of coming down to a 32 degree temperature, naturally.

(Testimony of Wilbur J. Mills.)

Q. I understand the eggs would not have been affected by the fact that the temperature of the room went up to as high as 42? A. No.

Q. Referring to the other records that you have with you, what are those?

A. Those were the manual records. We have thermometers placed through the rooms, which may be moved from time to time, but there are in extent about three to five thermometers in each room, which are read at different elevations, and against the side walls of a room, or the floor of a room, in an effort to get a very close approximation of the temperature throughout the room.

Q. And who takes these readings and makes this record? A. Our temperature men.

Q. Do they work under your immediate supervision?

A. They work under the immediate supervision of the chief engineer, subject to any orders that we may give.

Q. And the whole process is under your direction? A. That is correct.

Q. And the keeping of these records is under whose direction? [1747]

A. It would be under my direction.

Q. Are these part of the regular records of your corporation kept in the regular course of business?

A. They are.

Q. I would like you to produce the records for the 8th of February, or the date when this Lot 3737 went into room 41 of your refrigerating plant.

(Testimony of Wilbur J. Mills.)

A. As I recall, Mr. Pratt, the merchandise was ordered into storage on the 10th of February.

Q. And it actually went into storage on what date?

A. Either the 10th or the 11th. We would not know which date that was, depending on the day that they ordered them into storage. It could be either date.

Q. And this sheet that you have handed me is the record for February 10, 1943?

A. That is correct.

Q. And this is posted at the time?

A. That is posted each time the temperature man comes back from his tour throughout the warehouse.

Q. And how many times a day does he go into the warehouse to determine the temperature?

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness. There is no way Mr. Mills knows how many times a man goes into a place.

Mr. Pratt: We will see if he does.

Q. Do you know how this work is done?

A. They go into it six times a day. [1748]

Q. Under your supervision?

A. That is correct.

Q. The times mentioned on this sheet are 4 a.m., 8 a.m., 1 p.m., 4 p.m., 8 p.m., and 12 p.m.?

A. That is correct.

Q. That is about every four hours—first every four hours, from 8 a.m. to 1 p.m.—that is five hours

(Testimony of Wilbur J. Mills.)

—and then the next period is to 4 p.m., which is three hours, then four hours, and again four hours, is that right? A. That is correct.

Q. The left-hand column is the number of the room, is it not? A. That is right.

Q. So that when you get down to room 41 does this show what the contents of the room were on that date, on the 10th of February?

A. It says, "Pears, Persimmons, Apples and Cheese."

Q. And that is on the 10th?

A. That is right.

Q. Now, on the 11th of February, in room 41, what does it show as to the contents?

Mr. Faulkner: I object to all of this, your Honor, as incompetent, irrelevant and immaterial, not within the issues of this case, not binding upon the defendants, no foundation laid.

Mr. Pratt: The defendant asked for it.

Mr. Faulkner: I did not ask for any such thing, your Honor, whether there were apples, cheese, or something else in a room. I did not ask for this record, at all.

The Court: I may be misfaken, myself, but there were [1749] records called for here, were there not?

Mr. Faulkner: No, I asked for the best evidence of the temperature of the chill room.

The Court: That was the record.

Mr. Faulkner: Yes, your Honor.

The Court: Is this the record?

(Testimony of Wilbur J. Mills.)

Mr. Faulkner: No, the best evidence is the man who kept them.

The Court: I have ruled on that. You have a record. I have determined that they were under this witness' supervision and therefore he can testify.

Mr. Faulkner: Your Honor ruled that. I am not trying to avoid your Honor's ruling. Your Honor knows I do not do that. But whether there were cheese, or apples in the room I do not see where it comes into the case.

The Court: What relation has that?

Mr. Pratt: This is the date previous to the eggs going in.

The Court: I will allow it as a preliminary question in the interest of time.

Mr. Faulkner: If the witness is going to testify from these records on which Mr. Pratt is already examining him, I want my objection to go in here very definitely that we object to this record being used by this witness to refresh his recollection upon the ground that it is a record which [1750] he did not keep, which does not record acts or transactions on his part, and that the evidence is incompetent, irrelevant, and immaterial, hearsay as to the defendant, and no foundation laid, and not the best evidence.

The Court: The objection will be overruled. Proceed.

Mr. Faulkner: Exception.

(Testimony of Wilbur J. Mills.)

Mr. Pratt: Q. Will you interpret the record for the 11th day of February, 1943, as to room 41?

Mr. Faulkner: Your Honor, I do not want to be objecting all the time, but here is a bunch of papers that have not been offered in evidence.

Mr. Pratt: I will offer them.

Mr. Faulkner: Then he wants them interpreted.

The Court: Q. What do these records disclose?

A. Temperature, sir.

The Court: Proceed.

Mr. Pratt: Q. On the 11th day of February—

Mr. Faulkner: We object to any testimony interpeting a record that is not in evidence.

Mr. Pratt: I will offer it in evidence in a moment, your Honor.

Mr. Faulkner: You can't get it in the record or have it testified to until it is in evidence. That is the rule, as I understand.

The Court: What is this that the witness has in his hand? [1751]

Mr. Pratt: Q. What are these papers?

A. Temperature records.

Q. Temperature records, that is, records kept by your company in the ordinary course of business? A. That is right.

Q. Under your supervision?

A. That is right.

Q. Have you the records as to room 41 for the period from February 10th to August 25th, and also the records of room 63 from August 25th to October 14th? A. I have.

(Testimony of Wilbur J. Mills.)

Q. Will you produce them all?

A. I have them all here.

Mr. Pratt: I offer them in evidence.

Mr. Faulkner: May I ask the witness a question?

The Court: You may.

Mr. Faulkner: Q. Mr. Mills, these records that you hold in your hand are records kept under the supervision of your chief engineer, are they not?

A. They are prepared under his supervision.

Q. In other words, he is the man who prepares the records and is in charge of the temperature of the room, isn't that correct?

A. The records, Mr. Faulkner, are prepared by temperature men under his supervision.

Mr. Faulkner: All right. I renew the objection, your Honor.

The Court: Q. Then is this engineer under your supervision? A. Yes, sir.

Q. And where are these documents kept? Do you keep them, or [1752] does the engineer keep them?

A. They are kept in the office—under my direction and in the office.

The Court: Proceed. Let them be admitted and marked.

Mr. Faulkner: Exception.

Mr. Pratt: I ask that they be marked as one exhibit.

(The documents were thereupon marked U. S. Exhibit 133 in evidence.)

(Testimony of Wilbur J. Mills.)

Mr. Pratt: Now, will you interpret the record as to the 11th day of February, 1943, and state what kind of products were in room 41 in your plant?

A. This recording records cheese, apples, pears and persimmons.

Q. And how about the next day, the 12th?

A. The same items.

Q. How about the next day?

A. The same items.

Q. When do you show any eggs in room 41 according to that record?

A. That room shows having been whitewashed on the 14th of February and the commodity is left blank on the 15th, but it is loading, which was eggs, of course.

Q. And when did eggs go into it, according to that record? A. The 15th of February.

Q. And what does the record disclose as to the contents of the room on the 15th of February?

A. It is left blank for some reason.

Q. And the next day? A. Eggs.

Q. And from that time on to the 25th of August, 1943, what is shown as to the contents of the room?

A. It is eggs. I [1753] think at some point we put some milk in there, but there are eggs all the way through here.

Q. I direct your attention now to room 63, beginning on the 21st of August, 1943. What was in the room at that time, 63? A. Eggs.

(Testimony of Wilbur J. Mills.)

Q. And from that time on to the 14th of October are eggs indicated in room 63 during that entire period? A. They are.

Q. Now, the temperature of room 41 and the temperature of room 63 are shown on each of these days—— A. That is correct.

Q. For these various times of day: Four a.m., eight a.m., one p.m., four p.m., eight p.m., and twelve p.m., is that right?

A. That is right.

Q And they are shown opposite the figure in the left-hand column, the room No. 41?

A. Correct.

Q. And again of room 63, is that right?

A. That is right.

Q. So that the records speak for themselves so far as the temperatures at these times are concerned, is that right? A. That is right.

Mr. Pratt: You may cross examine.

Cross Examination

Mr. Faulkner: Q. Mr. Mills, I show you this top disk, U. S. Exhibit No. 131, which appears to be a record made on February 12th.

A. That is right.

Q. Mr. Mills, there isn't any question that on that day or that week the temperature was not regular in that plant, was it? [1754]

A. In the plant?

Q. That is, in that particular place, wherever that clock was kept?

(Testimony of Wilbur J. Mills.)

A. We were transferring that room at that time.

Q. You were what?

A. Transferring that room.

Q. How do you mean, transferring that room?

A. Removing one commodity to make room for another.

Q. Why was the temperature so varied?

A. Doors opening, and this clock, of course, sits on a post. I do not think you would find quite as much variance. This is only one point in the room.

Q. What?

A. This happens to be only one point we have, which happens to be on a post. Naturally, the men go in and out and there is a variation in the temperature.

Q. In other words, in a refrigeration plant the frequency with which the door is opened will cause the temperature to vary?

A. If stuff is being pulled out and fresh stuff coming on, we would have a temperature of approximately 50 or 60 degrees. That would naturally cause your temperature to fluctuate.

Q. Do you know of your own knowledge what caused the temperature to fluctuate the week of February 12th? A. Loading in and out.

Q. Were you present at that time?

A. I was at the plant at that time.

Q. You saw that loading in and out?

A. Oh yes. [1755]

Q. How frequently was the door open, Mr. Mills?

(Testimony of Wilbur J. Mills.)

A. I couldn't tell you that. Each time a load goes in and out it would be open.

Q. Was it open ten times a day?

A. Oh, yes.

Q. Was it open twenty times a day?

A. I presume it would be, yes.

Q. How often was the door open in the week of July 16th?

A. Very frequently. The temperature man, and there might be small orders going on. A room would be loaded, of course, at that time, and the only reason to open that door would be for the temperature man or for orders to be withdrawn from that particular room.

Q. Now, from the period that is reffected in—what do you call these?

A. Those are temperature charts, recording temperature charts.

Q. In the period that is reflected in these temperature charts, apart from the contents of these boxes, there isn't any question that your company did everything in its power to peserve the temperature in that room at or as near as possible to 32 degrees, is that right?

A. That is correct. We would naturally hold these temperatures.

Q. Why would you hold the temperatures to 32 degrees, Mr. Mills?

A. 32 degrees is an accepted temperature for eggs.

(Testimony of Wilbur J. Mills.)

Q. Isn't 55 degrees an accepted temperature for eggs? A. Not for storage. [1756]

Q. In other words, in your opinion in the matter of the refrigeration of eggs, the accepted temperature is 32 degrees? A. 30 to 32.

Q. What will happen when the temperature goes higher than that, Mr. Mills?

A. For what period of time, Mr. Faulkner?

Q. For a week.

A. It probably would not affect it a great deal. Merchandise, of course, would not go up that high.

Q. Suppose the temperature went to 110 degrees for a week?

A. I can't tell you. I never had any experience of that kind.

Q. I did not ask you about your plant. I am talking about what will happen in any refrigeration plant where temperature goes high.

A. I wouldn't know that.

Q. You have never had that experience, is that it? A. No, sir.

Q. Are you an expert on refrigeration?

A. I believe I have a fundamental knowledge of it, yes.

Q. Do you go further than a fundamental knowledge? A. Yes, I do.

Q. Based upon that, in your opinion, the proper temperature for the preservation of eggs is 32 degrees? A. 30 to 32 degrees.

Q. And if there is a variance the preference is that it be slightly under, is that it?

(Testimony of Wilbur J. Mills.)

A. Will you repeat that question?

Q. If there is a variance, the preference is that it be just slightly under, isn't that corerct?

A. I wouldn't go under 30 degrees. [1757]

Q. But having in mind a temperature of 32 to 34 degrees, the variance above 34, the preference would be that it be a little under 32 than over 34?

A. You are talking about a long hold deal, are you not?

Q. A long hold deal. A. Oh, yes.

Q. How long will it take eggs to thaw out that had been in a temperature of 32 degrees for a period of 24 hours, 48 hours?

A. They would not have to be thawed out. They wouldn't be frozen.

Q. I do not mean thawed out. How long would it take them to acquire a substantially higher temperature, such as the temperature of a room, after they had been in storage for twenty-four hours, forty-eight hours?

A. I am not quite sure I follow that question. I wish you would repeat it.

Q. In other words, some eggs are placed in your plant at a temperature of 32 degrees.

A. Yes.

Q. After they are there for a certain time the eggs, themselves, are at the same temperature as the room, isn't that correct?

A. After they have been there a certain length of time, that is correct.

(Testimony of Wilbur J. Mills.)

Q. How long does it take them to get that temperature?

A. That depends on the amount of merchandise you are placing in a room, for instance. You load a complete room with high temperature merchandise, naturally the amount of temperature necessary to remove that heat from that product varies considerably, so I couldn't give you a definite answer on that question.

Q. Sometimes it will acquire the heat of the chill room or the refrigeration room?

A. It will acquire the temperature.

Q. The temperature? A. That is correct.

Q. Assuming that they are removed and placed, we will say, in this room, how long would it take those articles to acquire the temperature of the room?

A. What is the temperature of this room?

Q. Well, whatever it may be.

A. It would take about two days, I gather—a day and a half to two days, probably. You are talking of a case of eggs?

Q. Yes. It would take a couple of days?

A. That is right.

Q. In respect to any of the eggs that went into this room on the 15th of February, I understood you to say that those eggs still preserved the chill from the freight car; did I understand you to say that?

A. I think my testimony at the time, Mr. Faulkner, was that the eggs were unloaded out of the car

(Testimony of Wilbur J. Mills.)

on the 8th of February, which was the 25 cases we handled, and they were ordered into storage on the afternoon of the 10th of February; so they would have been out of storage that long at least. The eggs which were delivered to us, that is, the 80 cases, of course, I wouldn't have any background on that. I do not know how long they had been out of storage. [1759]

Q. I understood you on your direct examination today to say that those eggs when they went into this chill room 41, would not have lost the coldness that resulted from their being carried in the railroad cars?

A. I do not believe there was any question put to me of that nature. If there was, I did not understand it that way.

Q. You have some documents there that I have not seen.

The Court: It is time for adjournment. You may examine them during the recess.

Mr. Faulkner: I have only about two questions and I will finish with the witness. There was just one there.

Q. You said the eggs went in on the 15th?

A. Of February, do you have reference to?

Q. Yes, February 15th.

A. I believe that is correct.

Mr. Faulkner: We had better take the adjournment, because there is one other I want to look at.

The Court: The jurors may be excused until two o'clock.

(A recess was taken until two o'clock p.m.)

Afternoon Session, February 26, 1946, 2:00 p.m.

The Court: The jurors are present. You may proceed.

WILBUR J. MILLS,

recalled.

Cross Examination (Resumed)

Mr. Faulkner: Q. Mr. Mills, I think these cards start on February 9th—at least, I didn't find any earlier ones. A. Yes.

Q. It appears on this one marked 41, there was fruit in that. A. That is correct.

Q. I couldn't read, Mr. Mills, what the fruit was?

A. Room 41, on this temperature record, dated the 9th, which was pears, persimmons, cheese and apparently cranberries.

Q. That appears, according to this record, to have been contained in that box up to the 15th?

A. That is correct.

Q. And on the 15th something happened in the box; I think you told us the box was whitewashed.

A. Of course, the box showed on the 9th is was defrosted. We were in the process of preparing for the transfer on the 9th and it occurred, I believe——

Q. This is the 15th—that is blank.

A. That's right; it shows loading on the 15th. That is the time we went into that room with eggs.

Q. Pardon me?

A. That is the time we went into that room with [1761] eggs.

(Testimony of Wilbur J. Mills.)

Q. The record shows the eggs were in the room on the 16th?

A. We know it is the 15th here, because it shows loading here, and it would be loading of eggs.

Q. You mean loading that room?

A. Yes, sir.

Q. What eggs went into the room, do you know?

A. You mean the lot numbers?

Q. Yes.

A. Well, I don't know—other eggs—lot 3737.

Q. There is nothing on that record to show what lot went in?

A. Oh, no, the room contained up to 5400 cases when it is filled. That couldn't be shown on the record.

Q. In other words, there would be various lot records? A. That's right.

Q. What was the purpose of whitewashing the room?

A. We always, before eggs are placed there, the room is completely cleaned and the walls whitewashed, and make it a clean, sanitary room.

Q. Why do you do that?

A. If any possible mold growth would be on a wall, we use whitewash with a copper sulphate solution to make sure a room in which eggs are placed is free, absolutely, from mold growth, and in a clean condition.

Q. A clean condition also means free of odors?

A. Yes, sir.

Q. In other words, it wouldn't be good practice

(Testimony of Wilbur J. Mills.)

to put those eggs into the storage with the vegetables or fruits you described?

A. Terminal Distributing Company never stores fruit with eggs.

Q. Why?

A. Because of the odors and contamination that might result.

Q. In other words, the odors from the fruit and vegetables will permeate the shell of the egg and affect the egg? A. Yes.

Q. In addition to the calcimining of the room—is it sodium sulphate you use?

A. Copper sulphate.

Q. You do something to the floor, do you not?

A. The floors are merely scrubbed and cleaned.

Q. What do you use on the floors?

A. Soap.

Q. Where is the copper sulphate used?

A. The copper sulphate is used right in the solution of the whitewash.

Q. Then, after that has been done, in your opinion then and only then is the room, the refrigerating room, fit for the storage of eggs?

A. That is correct.

Q. Is that correct?

A. Yes, the room has been clean up, yes.

Q. You mentioned, Mr. Mills, that at some time these were transferred. I tried to find the date, but I have forgotten the date—in August?

A. August 25th, I believe, we started to transfer

(Testimony of Wilbur J. Mills.)

that room. That is my recollection of the date—into the new room you have reference to?

Q. Yes.

A. I believe August 25th, you will find it. [1763]

Q. Where were these eggs you put into the room? A. 3737.

Q. Where were those?

A. They would be held in the holding room. We would have a number of rooms and leave the eggs until we were ready to put them into that room under refrigeration.

Q. Now, here is the card of August 25th. What was in the room on the 25th? A. Eggs.

Q. 41? A. Eggs, butter and milk.

Q. What was in room 61?

A. I believe we are talking about 63.

Q. I mean 63. A. Eggs.

Q. Is that the card that shows the transfer?

A. Yes, it shows the room was in the process of being transferred.

Q. How do you follow which went into which?

A. Of course, there are no lot numbers given. It shows here "41 transferred."

Q. All of them? A. The whole room.

Q. That is when you transferred the entire room into room 63? A. Yes, that is correct.

Q. And then on the 26th, you still have eggs in the room after the transfer, is that correct?

A. Yes, sir; in addition to temperatures, the humidity there is given, but it shows transfer, still.

Q. On your record here, Exhibit 123; the only

(Testimony of Wilbur J. Mills.)

notation as to the locality of the lot No. 3737 in so far as your record goes, which starts on February 8th and ends on the 14th, is [1764] that not right?

A. That is correct.

Q. On what do you base your statement that the boxes that were numbered 3737 were transferred out of 41 into 63?

A. Because the room shows transfer as of August 25th. You see, the marking of the room on that ledger sheet is of no consequence to us. It doesn't indicate in ordinary events where the merchandise is placed. Why that is on them I cannot tell you.

Q. The only record you have is a record which shows room 41 and then it shows a transfer. Do these records show that ultimately all eggs were removed from 41?

A. Yes, and if you follow it, you will find about the 28th, I believe it is, the room is no longer cooler.

Q. Do you know the date when it was finished, so I won't have to go through all of these?

A. I thought it was the 28th. I haven't all these dates in mind, but I believe it is indicated, however.

The Court: Step down and show counsel.

Mr. Faulkner: Q. This is the 29th?

A. All right, the 29th—it is still all right.

Q. The 28th shows the eggs are still there?

A. The 28th, yes.

Q. The 29th shows they are still there?

A. That's right, the temperatures are right on 30 and 31, there.

(Testimony of Wilbur J. Mills.)

Q. What date is that?

A. August 30.

Q. What date is that?

A. Between the 3rd and 4th is when we [1765] brought it down.

Q. In other words, the transfer was completed sometime between the 25th and the 4th of September? A. Yes.

Mr. Faulkner: That is all. Just a moment—that is all, Mr. Mills.

G. WALLACE RYNERSON,

called as a witness for the Government; sworn.

The Clerk: Q. Will you state your name to the court and jury?

A. G. Wallace Rynerson.

Direct Examination

Mr. Pratt: Q. Mr. Rynerson, where is your home? A. In Los Angeles.

Q. What is your occupation?

A. I am inspector of the United States Food and Drug Administration.

Q. That is of the Department of——

A. It is under the Federal Security Agency.

Q. Formerly known as the Department of Agriculture?

A. It was known as the Department of Agricul-

(Testimony of G. Wallace Rynerson.)

ture until 1938. It was reorganized and placed under the Federal Security Agency.

Q. In your official capacity as an inspector of the Food and Drug office, do you have any occasion to exercise any duties in regard to eggs?

A. I examine eggs on occasions.

Q. Do you recall an occasion early in November of 1943 when [1766] you went to the steamship William S. Clark in the harbor at Long Beach?

A. Yes, I recall that.

Q. With whom did you go?

A. I accompanied State Inspector Wirth and County Inspector Bradway.

Q. You all went together? A. Yes.

Q. When you got down there to the steamship, what did you do?

A. We contacted the steward and he took us down into the hold and showed us where a lot of eggs were stored.

Q. What did you do then, as far as those were concerned?

A. We candled the eggs to see what the condition was.

Q. How many cases of eggs did you examine there on the boat?

A. We opened six crates of eggs on the boat.

Q. Who removed the covers of the cases of eggs?

A. Well, all three of us worked together—one or the other of us removed the lids. I don't recall in each particular instance, but there was one of the three of us in each case.

(Testimony of G. Wallace Rynerson.)

Q. You examined them one case at a time, I assume? A. That's right.

Q. And on the first case who did the work of candling the eggs?

A. Mr. Bradway candled the first case.

Q. How many eggs of the first case did he candle?

A. It was the entire case—30 dozen.

Q. Did you have anything, yourself, to do in the candling of those eggs?

A. I observed the candling and checked the condition in each case, and made notes of it. [1767]

Q. Did you make notes—

A. Yes, sir.

Q. ——of your work in candling the eggs?

A. Yes, sir.

Q. Have you got those notes? A. Yes, sir.

Q. Do those notes include the record of candling the first case? A. Yes.

Q. When did you make these notes?

A. On November 3, at the time they were——

Q. At the time the work was being done?

A. That's right.

Q. Refreshing your recollection from your notes, will you state what the result of your candling was; that is, what conclusion you arrived at in regard to the eggs in that first case? [1768]

Mr. Faulkner: May I see the notes, please?

Mr. Pratt: Q. What was the date?

A. November 3, 1943.

Q. Will you answer the question, please?

(Testimony of G. Wallace Rynerson.)

Mr. Faulkner: I object to the witness answering the question because the record shows he did not candle the eggs.

The Court: He was there at the time.

Mr. Faulkner: But he merely made a note of what someone else told him.

Mr. Pratt: No, he said he observed what was done and the results of the candling.

Mr. Faulkner: Mr. Wirth just left the stand and said Mr. Bradway candled the eggs.

The Court: Read the question.

(Question read.)

The Court: Objection overruled.

Mr. Faulkner: May I ask Mr. Rynerson a couple of questions about these notes?

The Court: Proceed.

Mr. Faulkner: Q. Do those notes represent the observation of the eggs at the candling process made by you?

A. I actually didn't handle the eggs. I watched them while they were being candled.

Q. Did you watch each egg being candled?

A. Yes, sir.

Q. Pardon me? A. Yes, sir. [1769]

Q. Are your notes kept separately and independently from the others? A. Yes, sir.

Q. And Mr. Bradway candled them and you watched him candle them? A. Yes.

Mr. Faulkner: We renew the objection.

The Court: The objection is overruled.

Mr. Faulkner: Exception.

(Testimony of G. Wallace Ryneerson.)

Mr. Pratt: Q. State the result of your examination of the eggs.

A. On the first case there were three candled eggs out of the thirty dozen; in other words, three mixed rots.

Q. Go ahead.

A. On the second case Mr. Wirth did the candling and on the other five cases Mr. Wirth did the candling and I observed the results at the time and made a note.

Q. The cases subsequent to the first case, only half of the eggs in the case were actually candled, is that right?

A. Fifteen dozen in each case were candled.

Q. Referring, again, to the first case, have you any further recollection, refreshing it if need be from your notes, of the eggs in the first case other than the fact that there were three mixed rots?

A. Well, the only thing I could add was that they did not approach the AA grade.

Q. What grade were they? Are you able to state what grade they were?

A. As far as grading, I am not able to qualify as an expert on grades, although I have a general working knowledge [1770] of grades; that is, I know in general terms the difference in air cell space between a Grade AA, for instance, and a Grade B.

Q. Then, the only thing you observed at that time definitely is the fact that in this first case there were three mixed rots, is that right?

(Testimony of G. Wallace Rynerson.)

A. That is all I counted.

Q. What do you mean by a mixed rot?

A. It is an egg in which the interior is all mixed up and addled. It doesn't have a full yolk. It has the appearance of being stirred up.

Q. Now, as to the second case, what did you find?

A. In the fifteen dozen there were six addled eggs and nine spot rots.

Mr. Faulkner: I understood the witness to testify that in the first case he observed the candling, and in the second case he merely took the results of the candling.

The Court: Q. Did you observe the second and third?

A. I observed the results.

Mr. Faulkner: Q. You observed the results?

A. I observed the egg in each case.

Mr. Pratt: Q. And in the second case, you say, of the fifteen dozen you say there were six addled eggs?

A. There were six addled eggs and nine spot rots.

Q. And nine spot rots? A. Yes, sir.

Q. What are spot rots?

A. That is a type of rot where the yolk is settled and it adhered to the shell of the egg.

Q. On the third case what did you observe?

A. Three addled eggs, twenty-one moldy and ten spot rots. [1771]

Q. And on the fourth case?

(Testimony of G. Wallace Rynerson.)

A. Six addled eggs; twenty-nine moldy, and five spot rots.

Q. And on the fifth?

A. Four addled, one spot rot, and one molded.

Q. And on the sixth?

A. Four addled, three spot rots, and one moldy.

Q. Mr. Rynerson, did you observe the markings on these cases? A. Yes, I did.

Q. What did you observe in that connection?

A. I made a tracing of markings.

Mr. Faulkner: May I have the book marked for identification that the witness just used?

The Court: It may be admitted and marked.

(The book was marked Defendants' A-K for identification.)

The Witness: Shall I describe the markings?

Mr. Pratt: Q. The paper which you have produced, can you separate it from these other papers?

A. Yes, sir.

Q. Do you want to use this? A. Yes.

Q. Are these tracings or just copies of what was on the various cases?

A. Those are tracings.

Q. The top word of this page "Medium"—on how many of the cases did that word appear, can you tell?

A. I can't say exactly how many; part of the cases bore a "Medium" marking such as that and the remainder bore a "Medium" marking like that (indicating). [1772]

(Testimony of G. Wallace Rynerson.)

Q. Like the bottom word on this paper, is that right?

A. They were all marked "Medium"; some had one kind and some another.

Q. But all were marked "Medium"?

A. That's right.

Q. On how many of the cases did that number 3737 appear? A. That was on all cases.

Q. On all cases. Now, the lettering here, "Nye & Nissen, Inc., S. F., Cal. 325," on how many cases did that appear, if you know?

A. I don't know exactly; it was on almost all of the cases. There were a few on which it did not appear.

Q. And the size of these markings on the case, was it the same as the size that appears on your paper? A. Yes, as nearly as I can make it.

Mr. Pratt: I offer this in evidence, if the Court please, this piece of paper.

Mr. Faulkner: Objected to as incompetent, irrelevant and immaterial; and it is my understanding all this evidence goes in under the basic objection that we have addressed to the Court.

The Court: In any event, you have your objection in the record, and the objection is overruled.

Mr. Faulkner: I wanted it clear in the record and in your Honor's mind and Mr. Pratt's mind.

The Court: Very well.

(The document was marked U. S. Exhibit 184 in evidence.) [1773]

Q. Now, Mr. Rynerson, after you had examined

(Testimony of G. Wallace Rynerson.)

these cases in the manner that you have described and made this record of the markings on them, what did you then do?

A. As far as my own activities were concerned at the time, I went to the steward and made a copy of his invoice covering the shipment of eggs and obtained from him a statement to the effect that this lot of eggs was covered by that invoice.

Q. Never mind the character of the statement from him. You made a copy of the invoice, did you?

A. Yes (handing a document to Mr. Pratt).

Q. And what else did you do?

A. After obtaining a statement from him, that was all that I did, personally, on that day.

Q. How long were you there at the boat?

A. It was about three hours, I would say.

Q. What part of the day was that, Mr. Rynerson?

A. We got there a little before lunch. It would be about eleven o'clock, 11:30. And we finished up, probably two, two-thirty—in that neighborhood.

Q. You had lunch on the boat, did you?

A. Yes, sir.

Q. After that, after you had completed the work there, what did you do?

A. Well, I did nothing more until the next day on this particular lot of eggs. On the 4th in the afternoon I went to the premises of Nye & Nissen—the address was 400 East Fourth Place, Los Angeles—and met Inspector Wirth there, and together we candled ten more half-crates of eggs [1774] from the same——

(Testimony of G. Wallace Rynerson.)

Q. You candled 10 half-crates?

A. Half of each of ten crates.

Q. You examined half the eggs in each?

A. Yes, sir.

Q. What was the result of that candling?

A. I will have to refer to my notebook on that. Well, I have identified as case 7, which was the next case handled, one mixed rot, one moldy, one spot rot, one black rot, 84 eggs grade B, 92 eggs grade C.

Q. How did you determine the grade of those eggs?

A. That was determined in conjunction with Inspector Wirth.

Q. Was that his judgment rather than yours as to the grade of those eggs?

A. The grade would be his judgment. I would confirm it in general terms. As I say, I am not qualified to——

Q. Now, as to the rots——

Mr. Faulkner: He had not finished.

Mr. Pratt: Q. Pardon me. Did you finish?

A. Not exactly qualified to distinguish the fine points between grades, although I can say the best grade in there was grade B.

Q. In other words, there were no grade AA's?

A. That's right.

Q. Nor were there any grade A's?

A. Well, I couldn't say positively on that. I do not think there were.

Q. As to the appearance of rots or other in-

(Testimony of G. Wallace Rynerson.)

edible eggs, was that your judgment or the judgment of Mr. Wirth?

A. That [1775] was the judgment of both of us.

Q. That was your own individual judgment, was it? A. Yes.

Q. That was the first of these cases, or you call it case No. 7, do you? A. Yes.

Q. How about the next case, No. 8?

A. In that case there were two mixed rots. I didn't make any note of the grades in that one.

Q. How about the next case, the 9th?

A. The 9th case, there was one mixed rot, three spot rots, one black rot, 65 B's and 110 C's.

Q. How about the case No. 10?

A. There were three mixed rots and one moldy. I do not know the grades in that one.

Q. And the case No. 11?

A. Three mixed rot, three spot rots, 107 grade B and 67 grade C.

Q. And the 12th case?

A. 8 mixed rots, 4 moldy, 3 spot rots, 64 grade B's and 100 grade C's.

Q. Speaking of the moldy eggs, where was that mold?

A. Well, it varies from small black spots to large spots covering the area inside of the egg.

Q. On the what?

A. In each case where it was called moldy, the mold was on the inside of the egg.

Q. On the inside of the shell, is that right?

A. Yes.

(Testimony of G. Wallace Rynerson.)

Q. How about the thirteenth of these cases?

A. There were 5 mixed rots, 1 moldy, and 4 spot rots.

Q. And the fourteenth case?

A. 13 mixed rots, 8 moldy, 7 [1776] spot rots, and 1 black rot; 69 grade B's and 82 grade C's.

Q. And the fifteenth case?

A. Four moldy, 9 spot rots.

Q. And the sixteenth?

A. 21 mixed rots, 20 moldy, and 22 spot rots; 37 grade B, 80 grade C.

Q. Is that the last of the cases you examined on that occasion? A. Yes, sir.

Q. Mr. Rynerson, in these ten cases were there any grade AA eggs?

A. As far as I know, I do not——

Q. What is it?

A. I would say there were no grade AA eggs.

Q. After you had completed this candling of eggs on that occasion, there at Nye & Nissen's warehouse, what did you then do?

A. Well, I attempted to trace the lot back to its origin. I checked the records at the Terminal Refrigerating Company. I checked the records at railroad companies.

Q. Did you check any records at Nye & Nissen's there at Los Angeles?

A. No, I do not recall that they had any records to check.

Q. How long were you there at this Nye & Nissen warehouse on that occasion?

(Testimony of G. Wallace Rynerson.)

A. Two or three hours.

Q. Were these cases that you examined there marked in the same manner that you have indicated on this slip of paper, Exhibit 134?

A. Yes, it was the same lot.

Q. How many cases altogether were opened while you were present on the two occasions, both at the boat and in the warehouse? A. 16.

Q. Did you observe the nail holes in the cases after the tops had been removed?

A. Yes, I took note of that.

Q. What did you observe in that connection?

Mr. Faulkner: We object to that as not the best evidence, and calling for the opinion and conclusion of the witness, not binding upon the defendants.

The Court: He may state what he observed. The objection will be overruled.

Mr. Faulkner: Exception.

A. As I observed that there were no nail holes that did not have nails in them.

Mr. Pratt: Q. Is that true of all these cases?

A. Yes, sir.

Mr. Pratt: Cross-examine.

Cross-Examination

Mr. Faulkner: Q. May I have your book, please? Mr. Rynerson, on the 3rd of August you went down to this ship with Mr. Wirth and another man and yourself?

A. On the 3rd of November.

(Testimony of G. Wallace Ryerson.)

Q. What? A. On the 3rd of November.

The Court: The 3rd of November.

Mr. Faulkner: That is what I said.

Mr. Pratt: You said August.

Mr. Faulkner: Q. November 3, 1943?

A. Yes, sir.

Q. There were three of you?

A. Yes, sir. [1778]

Q. The first thing you did was to have lunch?

A. No, sir, we went down and looked at the lot of eggs first.

Q. What?

A. We went down and looked at the lot of eggs first.

Q. Then you had lunch? A. Yes, sir.

Q. And then you candled seven cases of eggs, or, rather, six cases of eggs on board of the ship?

A. Yes, sir.

Q. What time did you get through lunch?

A. Oh, it was possibly 12:30.

Q. And you spent from 12:30 to about 3:30 or 2:30? A. I think it was more nearly 2:30.

Q. That you left? A. Yes.

Q. In connection with the candling of those eggs, what experience had you had, Mr. Ryerson, in candling eggs?

A. I have had occasion to examine eggs—or, rather, I had had occasion to examine eggs at intervals during the previous two years in connection with the enforcement of the Federal Food and Drug Act.

(Testimony of G. Wallace Rynerson.)

Q. Did you candle them? A. Yes.

Q. How many times did you candle eggs prior to November 3, 1943?

A. I couldn't say exactly. It is not a continual job. We do lots of other things besides candle eggs.

Q. Pardon me?

A. I say we do lots of other things beside candle eggs.

Q. Pardon me?

A. I say we do lots of other things besides candle eggs. And I had candled eggs on, oh, five or six occasions. [1779]

Q. What is a AA egg? How would you determine a AA egg in the candling light.

A. It would show no defects in the way of rots and it would have an air space of not more than one-eighth of an inch.

Q. What air space is involved in a standard egg? A. I don't know it by that term.

Q. What air space is involved in an extra egg?

A. I wouldn't know.

Q. What air space in involved in a special egg?

A. I wouldn't know.

Q. What air space is involved in a B egg?

A. Let's see. I think 3/8 of an inch.

Q. And a C?

A. That would be more than 3/8 of an inch.

Q. Pardon me?

A. That would be more than 3/8 of an inch.

Q. Have you ever read the regulations of how to candle eggs, Mr. Rynerson?

(Testimony of G. Wallace Rynerson)

A. I did not know that there were regulations on how to candle them.

Q. Have you read them?

A. I do not know what regulations you are referring to.

Q. Any regulations at all. Have you read any regulations on how you candle eggs?

A. Are you referring to Department of Agriculture regulations on grades? I have read them.

Q. What? A. I have read them.

Q. Have you read them recently?

A. No, sir.

Q. What? A. No, sir. [1780]

Q. On the occasion that you were on this ship, I understand that you observed certain markings on certain cases, is that correct? A. Yes, sir.

Q. And one of the words you observed was the word "Medium"? A. Yes.

Q. And on other cases you observed the plural, the word "Mediums"? Is that correct?

A. Do you refer to the tracing? That is right.

Q. Is that right? A. Yes, sir.

Q. You observed on some of the cases the words, "Nye & Nissen, Inc., S.F., Cal. 325"?

A. Yes, sir.

Q. How did that appear on the case?

A. It had been placed on with a rubber stamp.

Q. Then you observed the figures "3737"?

A. Yes.

Q. Is that correct? A. Yes, sir.

(Testimony of G. Wallace Rynerson.)

Q. Did I understand you to say that on most of the cases "3737" appeared?

Mr. Pratt: All of them.

A. All the cases.

Mr. Faulkner: Just a moment, if your Honor please.

Mr. Pratt: It certainly is not proper for counsel to misquote the witness.

Mr. Faulkner: You may make your objection. I thought I had heard the witness correctly.

The Court: He said you misquoted the witness. Read the [1781] question and answer, Mr. Reporter.

(Record read.)

Mr. Faulkner: Q. On all cases.

A. Yes, sir.

Q. When did you make this memorandum, here?

A. What memorandum are you referring to?

Q. With the 37 mediums, Nye & Nissen.

A. Oh, I made that the time we were on the boat.

Q. On the boat? A. Yes, sir.

Q. That would be November 3, 1943, is that right? A. Yes, sir.

Q. But you wrote the date "November 4th, 1943" on the memorandum, is that correct?

A. Yes. That was a date with which our records were identified covering this particular examination. Completed the examination on the 4th.

Q. Previous to the 4th, is that right?

A. No, we completed the examination on the 4th and I identified my records with that date.

(Testimony of G. Wallace Rynerson.)

Q. Is that your practice to mark a memorandum the day after it is made with a date?

A. Well, we mark all our records with the same date for purposes of identification.

Q. But in this instance you remember that this particular paper, which now contains the mark U. S. Exhibit 134, was made on November 3rd?

A. Yes, sir.

Q. Now, on November 3rd did you go down into the hold of that ship? A. Yes, sir.

Q. Did you examine every case of eggs in the hold? A. No. [1782]

Q. Later there were how many cases brought up on deck?

A. Later they were all brought up on deck.

Q. Well, on that day? A. Yes.

Q. Were all the cases brought on deck on that day—the whole 40 cases in your presence?

A. Yes, sir, brought out and put on a truck.

Q. Pardon me?

A. They were brought out and put on a truck.

Q. Were you there at that time?

A. Yes, sir.

Q. Who else was there at that time?

A. Inspector Wirth, Inspector Bradway, and the shipping personnel.

Q. What time did that occur?

A. That was about two-thirty or three o'clock.

Q. At that time, when Mr. Bradway was candling eggs, how long did it take him to candle 360 eggs in the first case?

(Testimony of G. Wallace Rynerson.)

A. I don't know. It didn't take very long.

Q. Pardon me?

A. I don't know. It doesn't take very long.

Q. In other words, the matter of candling is very rapid, is it not? A. It goes pretty fast.

Q. Pardon me? A. It goes pretty fast.

Q. How many eggs were handled in his hands at a time, both hands?

A. He usually handled two at a time, I believe.

Q. Two in the right and two in the left?

A. Yes.

Q. Now, later, after Mr. Bradway had finished candling the eggs Mr. Wirth took over the candling, isn't that correct? A. Yes. [1783]

Q. Did he candle pretty fast? A. Yes.

Q. Tell me just what you saw Mr. Bradway do in respect to candling those eggs.

A. Held the eggs up before the light.

Q. You mean the candle light?

A. That is right.

Q. And where was it?

A. It was on a table in the galleyway.

Q. Where were you when he was doing that?

A. I was right behind him.

Q. You were behind Mr. Bradway?

A. Yes, sir.

Q. Did you observe each egg in the light?

A. Yes.

Q. Did you form a conclusion as to the quality of each egg as it passed through the light?

A. Yes, as far as the rots are concerned.

(Testimony of G. Wallace Rynerson.)

Q. In other words, the only part of this memorandum relating to the eggs concerning which you have made a note that in reality is a note of your own opinion, are the notes in relation to the black rots, is that right?

A. In relation to all rots.

Q. And the other rots? A. Yes.

Q. That is the inferior eggs, is that right?

A. Yes.

Q. And the notes in respect to the grade B and C throughout this memorandum do not reflect an opinion of you, is that correct?

A. As far as my opinion goes, I would hold to it.

Q. You what?

A. For what my opinion is worth, I would hold to that grading.

Mr. Faulkner: I do not follow the witness.

The Court: Read the answer, Mr. Reporter.

(Answer read.)

Mr. Faulkner: Q. Mr. Rynerson, did you make a record as this progressed? A. Yes.

Q. Isn't this what you did, Mr. Rynerson: After the thing was completed Mr. Bradway and Mr. Wirth, on the first case, counted the number of eggs in a particular position on the box and told you that those eggs were grade B's, and then counted the number of eggs in another position in a crate or a filler and gave you the number of grade C's and you put it in a book, isn't that right?

A. When we were on the boat I made no note of the grades at all.

(Testimony of G. Wallace Rynerson.)

Q. You made no note of the grades on the boat?

A. No.

Q. Where is the note about the grading of the other ten cases? Is that in that book? May I ask you this, Mr. Rynerson: Are there any other egg grading operations of yours reflected in this book?

A. No, I do not think so. Turn it over. That is upside down.

Q. Now, you prepared a column here, case 7, and what is at the top of the column in your book?

A. I have a notation of the case number, mixed rots, moldy, spot, black, and B's.

Q. And B's? A. Yes.

Q. Have you any C's?

A. The C's were the balance of the——

Q. The balance were the C's, is that it?

A. Yes.

Q. And you prepared that as this operation of candling those [1785] ten cases was in progress?

A. Yes, sir.

Q. Is that correct?

A. The actual writing was done by another inspector who was with me.

Q. Who?

A. Inspector Price, who accompanied me.

Q. Which is your handwriting, and which is his?

A. My handwriting is in the black pencil.

Q. So that the only writing that you did in this instance was to make a heading for the column, is

(Testimony of G. Wallace Rynerson.)

that right, and you have some figures here: "92, 92084, 1102, 653," is that right?

A. What was that?

Q. The heading is in pencil? A. Yes.

Q. The figure "7" is in pencil? A. Yes.

Q. And you have those figures that I just read off to you in pencil, and that is all the writing on that page that is in your hand writing?

A. No, sir, I didn't notice the figures correctly.

Q. 92084, 1152—maybe that is—you read what is in your handwriting on that page.

A. 92 C, 84 B, 110 C, 65 B.

Q. In other words, the only writing you made on the transaction relating to the 10 cases is eggs, Medium, "M", "Spots," "Blk." "B's," and then the "92 C, 84 B, 110 C," and "65 B" and the one figure "7"? Is that right? A. Yes.

Q. How did you come to put those figures down?

A. I put the headings on there and Inspector Price wrote the amount down as they were called off. [1786]

Q. He wrote the amount down as they were called off by whom?

A. Inspector Wirth and myself.

Q. Did you observe Inspector Wirth candle each of these cases? A. Yes, sir.

Q. Did you stand behind him?

A. We were working side by side.

Q. What?

A. We were working side by side.

Q. Who was doing the candling?

(Testimony of G. Wallace Rynerson.)

A. We were candling at the same time.

Q. Were you candling eggs? A. Yes.

Q. Pardon me? A. Yes.

Q. How many Grade B eggs did you candle in the operation involving ten cases?

A. I didn't count the grade B's in the cases that I candled.

Q. What?

A. I didn't count the grade B's or C's in the cases that I candled.

Q. What did you do with the eggs after you candled them?

A. I would set the rots to one side and place the good ones back in the crate.

Q. Then what was done with the balance of the eggs that you candled. A. What balance?

Q. Well, you took some eggs, you took some rots, spots, and moldy eggs out; what did you do with the other eggs?

A. Placed them back in the case.

Q. Then what happened to them?

A. Well, all I know from then on is hearsay.

Q. What?

A. All I know from there on is hearsay. I know what happened to them.

Q. Did Mr. Wirth recandle the eggs that you had candled? A. No.

Q. He did not? A. No.

Q. Did Mr. Price? A. No.

Q. Or Mr. Bradway?

A. Mr. Bradway wasn't there.

Q. He wasn't there. Now, how many cases of

(Testimony of G. Wallace Ryneron.)

eggs did you handle on this day? A. Four.

Q. Four. So that four of the cases of eggs were ungraded as to quality, is that correct? Four of the ten cases were ungraded as to quality?

A. So far as I know; we did not grade them.

Q. What?

A. So far as I know; we didn't grade them.

Q. Now, on the 8th case, that record you made at the time of the transaction, or it was made under your direction, was it? A. Yes, sir.

Q. It was made jointly by you and a man in your department? A. Yes, sir.

Q. What was the purpose of the record? What was the purpose of the record?

A. So we would know later what transpired.

Q. Pardon me?

A. So we would be able to know later what had transpired.

Q. In other words, the purpose was to have a record to show what transpired later, is that right?

A. That is right. [1788]

Q. In that record you set up a method of determining whether there were any grade B eggs, is that right? You prepared a chart with a scheme to show whether there were any grade B eggs?

A. Yes.

Q. Did you prepare the chart before you started the candling? A. Yes.

Q. Why didn't you prepare a chart to show AA, A, B and C eggs?

A. We knew from looking at the first six that there weren't any of that grade.

(Testimony of G. Wallace Rynerson.)

Q. What?

A. We knew from looking at the first six that there weren't any of that grade.

Q. You knew there weren't any of that grade?

A. They had not been encountered in the first six cases.

Q. How did you know that?

A. That was from Inspector Wirth's statement.

Q. It was quite apparent to you, even with your limited experience, that these were eggs which were in the process of deterioration, was it not?

A. Yes.

Q. So you assumed when you prepared your chart on the 4th that there would be no AA eggs, no A eggs, and you prepared a chart with a letter "B," is that right?

A. That is right.

Q. And then you made no notations whatever of any B eggs in that column, is that right?

A. No, that is not right.

Q. Is that right?

A. There is a notation of the B eggs in the cases that Inspector Wirth candled. [1789]

Q. Have you any notation of the B eggs in your memorandum?

A. It is right here (indicating).

Q. What have you got under the column "B"?

A. In case No. 7 there was a total of 84 B's, case No. 9 there was a total of 69 B's, case No. 11 107 B's, case 12 64 B's, 14 69 B's, case 16 37 B's.

Q. What were in the other cases that you did

(Testimony of G. Wallace Rynerson.)

not call? Were there no B eggs in the cases you did not mention?

A. I didn't make any note of it.

Q. In other words, you had places there of cases of eggs that you were creating a record for to show what happened in which the quality of the eggs is not noted, isn't that correct?

A. It was not noted.

Q. It was not noted?

A. Not in writing.

Q. What? A. Not in writing.

Q. Well, it was not noted in your book?

A. No.

Q. At all, was it? A. No.

Q. Those are the cases you looked at?

A. That is right.

Q. Now, the real purpose of this entire inspection by you and Mr. Wirth and everybody else was to remove the inedible egs out of those cases, wasn't it?

A. No, I wouldn't say that. It was to determine how many inedible eggs there were in there.

Q. Yes, and to remove or cause them to be removed, or direct that they be removed?

A. Inspector Wirth did that. [1790]

Q. What?

A. Inspector Wirth directed that they be removed.

Q. This candling was done in the firm of Nye & Nissen? A. Yes.

Q. That is, of the 10 cases? A. Yes.

(Testimony of G. Wallace Rynerson.)

Q. Am I correct in that? A. Yes.

Q. What is this on that page?

A. That is a continuation of the first page.

Q. While you were candling these eggs, these four cases; was Mr. Wirth candling the other six?

A. Yes.

Q. You had not, at the time you were down there in November, reached that stage of profficiency where you could be candling four cases of eggs and observe Mr. Wirth's operation at the same time, had you?

A. Well, he set out the rotten eggs and we checked them.

Q. What?

A. He would set out the rotten eggs at the time and we would check them together.

Q. Did you stand back of Mr. Wirth's shoulder and watch him candle six cases of eggs and at the same time candle four cases of eggs, yourself?

A. I was standing beside him, adjacent.

Q. You were watching the eggs in your four cases and he was looking at the eggs in six, is that right? A. Yes, sir.

Q. And you have no knowledge, whatever, as to the quality of a single egg candled by Mr. Wirth from personal observation, have you?

A. I wouldn't say that. [1791]

Q. What? A. I wouldn't say that.

Q. How many of the six cases did you observe Mr. Wirth classify as a B egg?

A. I couldn't say on the B's.

(Testimony of G. Wallace Rynerson.)

Q. On the C's?

A. I couldn't say that. I saw most of them were B's or C's, which were not rots.

Q. What?

A. I saw most of them were B's and C's that were not rots.

Q. How could you do that if he was candling six cases at the same time you were candling four?

A. I could glance over that.

Q. What?

A. It was easy to glance over there.

Mr. Faulkner: May I have the answer read?

(Answer read.)

Mr. Faulkner: Q. In other words, you saw the results, didn't you, of the manner in which he placed them in a case after he was through candling them, isn't that right?

A. Well, whenever he encountered a rotten egg he showed it to me.

Q. The only eggs you saw, then, were the rotten eggs, isn't that correct, before the candle light?

A. I saw some of the others, too.

Q. Well, that is what I do not understand. How many candles did you have? A. Two.

Q. You stood at one candle and candled four cases of eggs, isn't that right?

A. That is right. [1792]

Q. And at the same time he was at another candle candling six cases of eggs, is that correct?

A. Yes.

(Testimony of G. Wallace Rynerson.)

Q. What I want to know is, how you could see the eggs he was candling before the candle light?

A. Well, he wasn't so far away from me. Is wasn't so far to look.

Q. So you saw every egg that you candled, yourself, and every egg that Mr. Wirth candled?

A. I wouldn't say I saw every one that he candled. I saw all the rots he candled and I saw most of the others.

Q. You saw most of the others, is that right?

A. Yes, sir.

Q. Now, of the ten cases that were candled, you candled a half case to each case, is that right?

A. Yes.

Q. So that there were 15,000 eggs or, rather, 1500 candled, is that right? A. 1500.

Q. All together, isn't that correct?

A. No, it would be 150 dozen.

Q. Oh, a good many more eggs. In other words, there were 1500 dozen cases of eggs examined, is that right? A. No.

Q. There were 15 dozen to a case, is that right?

A. Yes.

Q. And there were 10 cases?

A. Yes, sir.

Q. That is 150 dozen? A. Yes.

Q. I am right that far, am I? A. Yes.

Q. And there are 12 eggs to a dozen?

A. Yes, sir.

The Court: It would be well for you to observe the clock now. It is time for recess. [1793]

(Testimony of G. Wallace Rynerson.)

Mr. Faukner: Q. There were in excess of 1500 eggs examined; am I corect in that?

A. I believe that is right.

Q. And you examined 600 of them, four cases?

A. Four times——

Q. I mean you examined about 600?

A. 48 times 15, whatever that is.

Q. You examined about 600 eggs, didn't you?

A. Yes, that is about right.

Q. And while you were examining them you also observed approximately 900 eggs that Mr. Wirth was examining before the candle, am I correct?

A. I wouldn't state any specific number that I saw him candle, but I saw all the rots that he candled.

Q. You testified that you knew what a mouldy egg was. In respect to the 10 cases on the 4th of November and the 6 cases on the 3rd, did you see any eggs at all out of the 20 cases of eggs—16 cases of eggs—that had mould on the outside?

A. Well, I don't recall. We did not make particular note of mould on the outside unless there was mould on the inside as well.

Q. What is your best recolleceion of the external appearance of these eggs? Were they mouldy on the outside, or not?

A. I think on the last case there were some eggs that were mouldy on the outside, but I do not know how many.

Q. The last case? You mean the last case on November 4th? A. Yes.

(Testimony of G. Wallace Rynerson.)

Q. Is that the only case that you remember any eggs that had [1794] mould on the outside?

A. Yes. My recollection is not definite on that. We did not make particular note of the mould on the outside unless there was mould on the inside.

Q. Now, on the boat did you examine the 6 cases there? Did you examine the external appearance of the eggs, the six cases on the boat?

A. Yes.

Q. And did any of them have any mold on the outside?

A. I do not recall that they did.

Q. When mold is on the inside how is it observable at the candle light?

A. Is shows up as a black spot.

Q. How does the black spot appear under the candle light? A. A black spot?

Q. Yes. A. You mean a black rot?

Q. Yes.

A. It has a wide black appearance.

Q. What?

A. It has a wide black appearance. The difference is a moldy egg, a spot adhering to the shell, whereas in a black rot it extends into the yolk.

Q. The black rot extends into the yolk?

A. Yes.

Q. Where is the black spot that you refer to? Where does that appear?

A. It would be on the inner surface of the shell.

Q. About what size is it?